

# EXECUTIVE SUMMARY

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## CHAPTER 1 INTRODUCTION

### Contents of this report:

- New issue: Blood Samples Taken by Force.
- Updates on Prior Issues and Recommendations.
- Three one-year blocks of statistics comparatively analyzed from January through December for the years 1995 through 1997.
- A statistical background of subject officers and complainants.
- An analysis of complaints and allegations by San José City Council Districts.
- Audit analysis and examples.

## CHAPTER 2 YEAR IN REVIEW

### A. GENERAL STATISTICS

September 13, 1997, marked the fourth anniversary for the Office of the Independent Police Auditor. In 1997, there was a total of 443 complaints filed. Of those complaints, 133 were filed directly at the IPA by members of the public who either personally came to the IPA office, telephoned, faxed, wrote or emailed their complaints. While the number of complaints received decreased by 37% from 1996, allegations of Use of Force increased by 17%. In addition to the intake of complaints, 451 completed investigations were audited in 1997. There were 22 complaints sustained, and 2 officers in four Formal cases resigned while under investigation.

### B. COMMUNITY OUTREACH

The IPA hosted a meeting of the Bay Area Police Oversight Network (BAPON) which was attended by members working in the field of police oversight from Santa Cruz, Novato, San Francisco, Richmond, Berkeley, members of the media, the Santa Clara County Human Relations Commission, and the public at large. The IPA also co-sponsored a three day conference for the National Association of Civilian Oversight of Law Enforcement (NACOLE) held in Oakland. Representatives from 12 states attended and information about their respective cities was exchanged.

The IPA wrote an article for the “Outlook” section of the *Washington Post* about the San Jose Auditor model. The article was published along with an Op-Ed piece from the *Washington Post* editorial board. The *San José Mercury News* Spanish language newspaper, *Nuevo Mundo* published a featured article about the IPA.

An interview with John McMannis of CNN was taped and was broadcast on different dates. Other media outreach included taping several segments at the TCI Community Channel, a radio program at San José State University, and a call-in talk radio program from Pittsburgh, Illinois.

The IPA made presentations for a Women’s Conference held at San José State University, the San José Human Rights Commission, the Santa Clara County Human Relations Commission, the Santa Clara County Grand Jury, the Santa Cruz Civilian Review Board in Santa Cruz, and at several classes held at San José City College and San José State University.

### **C. IPA STAFF AND OFFICE UPDATES**

The IPA experienced a high turnover in staff in 1997 primarily because the positions offered low wages and no benefits. The IPA worked with the Mayor’s Office to classify the positions and adjust the budget as necessary. As of July 1, 1997, the staff’s salary was brought up to par with other civil service positions, including benefits.

In addition to this Year End Report, a six month statistical summary was prepared in July 1997. Two IPA Newsletters were also published and distributed. The IPA compiled a reference manual which was distributed to all PSCU investigators containing all the procedural changes to the civilian complaint process that have resulted from the IPA’s recommendations, inter-agency agreements, and meetings throughout the years between the IPA, the PSCU and the Chief of Police.

The IPA received many inquiries and requests for information about the auditor model of civilian review. Visits to the IPA office included the Institute Director from the Police Executive Research Forum, the Assistant Police Chief and the City Manager from South Tucson, Arizona, and the City Manager and two Council Members from Albuquerque, New Mexico. Several months later, the City Manager and the newly appointed Independent Police Auditor for the city of Tucson, Arizona, spent a day receiving training at the IPA. Throughout the year, the IPA received phone calls followed by requests for additional information from various cities in California including Grass Valley, Petaluma, Santa Monica, Fairfield, and the LAPD Inspector General. Other requests came from Pennsylvania State University, Boise, Idaho, and Northwest, Washington D.C.

**D. OTHER PROJECTS**

In 1997, the IPA and the PSCU revised their operations in order to comply with two legislative bills that impacted the complaint process. One bill requires that complainants sign an admonishment advising them that if they file a complaint, they know is false they can be criminally prosecuted.

As of January 1, 1998, state law will mandate that all investigations of citizen complaints be completed within one year. Changes and improvements will be made at the PSCU, in order to meet this requirement.

Through out the year, the IPA has reviewed information about mediation programs in other cities. Mediation is a process whereby a civilian and an officer agree to come together to talk about the conflict that gave rise to a complaint. The IPA met with members from the SJPd, the San José Police Officers' Association and the Chief of Police. The SJPd is moving forward in it's review and study of mediation.

**CHAPTER 3 NEW ISSUE: BLOOD SAMPLES TAKEN BY FORCE**

The issue involves complaints alleging that blood samples were taken against the person's will at a place not suited or appropriate for the safe and sanitary taking of blood. Complainants alleged that blood was drawn by a technician at the request of a police officer while the complainants were handcuffed, physically restrained or pinned to the ground outside the SJPd parking lot. Several of the people that came to the IPA or the PSCU to file a complaint had visible injuries to the area where the blood was drawn. This precipitated a closer review of existing SJPd policy and guidelines.

When a person is arrested for a suspected felony, San José police officers transport the arrestee to the Preprocessing Center located adjacent to the San José Police Department. In this center, the arrestee will generally be booked, fingerprinted, interviewed, and placed in a locked cell to await transfer to the county jail. This center has over ten individual holding cells which are monitored by police staff. If the arrestee is not combative, his/her blood will be drawn in one of these rooms. If the arrestee is violent or combative, the arresting officer is barred from bringing the suspect into the center. Reasons given to the IPA were that it is difficult to move the arrestee to and from the center, and because the arrestee can create a disturbance. Therefore, the blood sample from individuals deemed violent or combative is extracted in the parking lot of the Preprocessing Center, or the individual is taken directly to the county jail where the blood is drawn in what appears to be a loading ramp and/or a parking lot for authorized personnel. It is undisputed that, if necessary, an individual, while handcuffed with their hands behind their back, will be forced over the hood of a patrol car or held down by officers on the ground where a technician will extract the blood.

The courts have held that it is lawful to physically restrain an arrestee for the purpose of drawing a blood sample provided it poses virtually no risk, trauma or pain, and is performed in a reasonable manner by qualified medical personnel in a medically accepted environment. The police parking lot would not be deemed an appropriate medical environment. The SJPD and county jail parking lots are poorly lighted, the ground is dirty, and equipment such as arm boards which reduce the risk of infection or injury to the subject's veins or tissue are not available. Risk of injury to the technician or officers is also increased whenever a subject is wrestled to the ground and restrained for the extraction of blood.

### **RECOMMENDATION**

When taking blood specimens as evidence relevant to the crime at hand, the San José Police Department should do so in a medically accepted environment, according to accepted medical practices and without excessive force.

## **CHAPTER 4            UPDATES ON PRIOR ISSUES & RECOMMENDATIONS**

### **A.        CIVILIAN REQUESTS FOR OFFICER IDENTIFICATION**

In the IPA's 1996 Year End Report, the IPA reported the problem that arose when civilians requested identification from police officers. Some complainants alleged that the officer did not identify himself/herself adequately when requested to do so. Others complained that the officer took retaliatory measures after being requested to give his/her name or badge number. The IPA recommended that the SJPD provide officers with business cards to be used for self identification. Business cards or other written form should be used.

UPDATE: Even though some solutions have been discussed, as of December 31, 1997, no new policy addressing this issue has been implemented by the SJPD.

### **B.        NEW COMPUTER SYSTEM**

In order to make the sharing of complaint information between the offices more efficient, a new computer link-up between the IPA and the PSCU was studied and designed.

UPDATE: Due to technical difficulties, the link-up was not completed as scheduled. However, the new database is now operational and ready for testing. Training on the new system will begin in February 1998.

### **C.        INTERNET ACCESS**

In the 1996 Midyear Report, the IPA requested to be added to the City of San José's internet connection.

UPDATE: In May 1997, the IPA's connection to the internet was completed. This connection has enabled the IPA to create it's own web site (<http://www.ci.san-jose.ca.us/ipa/home.html>).

**D. ADDITIONAL SPACE AT PSCU**

A recommendation was made in 1995 to have the PSCU secure additional office space. The space was to serve as an interview room for receiving complaints or for interviewing witnesses and police officers.

UPDATE: Additional office space has been annexed and is currently being used as an interview room.

**E. TIMELINES TO COMPLETE COMPLAINT INVESTIGATIONS**

During the last four years, different goals, policies and procedures have been established for the timely completion of investigations of complaints. However, there are other reasons besides the investigative process that add to the length of time a case remains open. A study of 41 complaints having a sustained finding was conducted in order to track the path and analyze the length of time these complaints remain at departments outside of PSCU.

The forty-one cases which were the subject of this study ranged from as little as 5 days to as much as 890 days from the initial intake to the closure of the case. In some cases, the file remained twice as long in other departments than at the PSCU.

One reason for this delay is that while the PSCU has set goals and operates under timelines, other departments do not. A complaint may remain with an individual for an extended period of time before it is processed. There are no set timelines for a complaint to be returned to the PSCU once it is sent to the Chain of Command, the Chief's Office, the Office of Employee Relations, or the City Attorney's Office.

Effective January 1, 1998, a law known as the Cardoza Bill (AB 1436), requires that all complaint investigations be completed within one year; otherwise, no discipline can be imposed on the subject officer. Any requests for additional investigation from the IPA must also be completed within this one year limitation. In order to meet the one year statute of limitations, the following is recommended:

1. The timeline to complete the investigation of a complaint, which is not covered by a Cardoza Bill exception, should be reduced from one year to no more than ten months. This ten month period should include the Chain of Command review in order to allow the IPA sufficient time to request additional investigation, if needed, within the required one year time frame.
2. Investigation requested by the IPA should be completed as soon as possible in order to stay within the one year time limit.
3. Time limits should be set for every bureau and department involved in the complaint process.
4. A reliable system should be instituted to adequately track complaints once they leave the PSCU.

## F. ENTERTAINMENT ZONE POLICING PLAN

### 1. BACKGROUND:

In the IPA's 1995 Year End Report, the IPA recommended that the SJPD should review and revise the policies and procedures for off-duty security services performed by the San José police officers. To address these concerns, the City created the Entertainment Zone Policing Plan (EZPP).

Owners and managers of the downtown nightclubs formed a committee called the Entertainment Zone Committee (EZ Committee). Because the EZPP was considered by the EZ Committee to be a by-product of the IPA's recommendation, several meetings have been held with the IPA to address on-going concerns regarding the implementation, policies, and procedures of the EZPP. Many of the issues raised by the EZ Committee pertain to administrative matters (such as the deployment of officers, the program's fee structure and its associated liability issues) and consequently, are outside the purview of the IPA. Nevertheless, these administrative issues are very important to the members of the EZ Committee and should be addressed by the City Administration as soon as possible. Other issues related to officer training, community relations and officer performance were also raised.

### 2. METHODOLOGY:

The IPA conducted site visits of all nightclubs in the Entertainment Zone on two occasions between the hours of 9:00 p.m. and 3:00 a.m. on a Friday and Saturday night. The IPA staff observed services provided by the EZPP officers from the start of their patrol through the closing of the clubs, and to the final disbursement of patrons.

### 3. CONCLUSION:

The EZPP has been in existence for only six months. This is not enough time to evaluate the program as a whole. However, the EZPP appears to be fundamentally sound and has a great potential for success. The SJPD has been and should continue to be, responsive to the suggestions from the stakeholders.

## CHAPTER 5 YEAR END STATISTICS

Type of Complaints	IPA Intake	PSCU Intake	Total
Formal: Civilian-Initiated (CI)	61	113	174
Formal: Department-Initiated (DI)	0	75	75
Informal (IN)	11	40	51
Policy (PO)	10	13	23
Procedural (PR)	32	56	88
In-Process	19	13	32
<b>Total Cases</b>	<b>133</b>	<b>310</b>	<b>443</b>

A total of **443** complaints were received from January 1 through December 31, 1997. The IPA received 36% of the total complaints filed during this reporting period.

## CHAPTER 6 COMPLAINTS & ALLEGATIONS BY COUNCIL DISTRICT

Council Districts	Formal		IN	PO	PR	Total Complaints	%
	CI	DI					
1 JOHNSON	8	1	2	2	10	23	6%
2 POWERS	6	3	2	3	4	18	4%
3 PANDORI	63	36	15	7	25	146	36%
4 FERNANDES	5	1	2	1	6	15	4%
5 DIAZ	20	4	6	3	12	45	11%
6 FISCALINI	19	4	8	2	5	38	9%
7 SHIRAKAWA, JR.	16	5	6	3	7	37	9%
8 WOODY	12	1	0	0	4	17	4%
9 DIQUISTO	10	2	5	1	10	28	7%
10 DANDO	11	2	3	1	3	20	5%
Unknown/Outside City Limits	4	16	2	0	2	24	6%
<b>Total Cases Received</b>	<b>174</b>	<b>75</b>	<b>51</b>	<b>23</b>	<b>88</b>	<b>411</b>	<b>100%</b>
<b>%</b>	<b>42%</b>	<b>18%</b>	<b>12%</b>	<b>6%</b>	<b>21%</b>	<b>100%</b>	
<b>Cases Closed</b>	<b>98</b>	<b>49</b>	<b>51</b>	<b>23</b>	<b>88</b>	<b>309</b>	
Formal: CI = Civilian-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural							

Classified complaints account for 411 of the 443 complaints received between January 1 through December 31, 1997. The remaining 32 are awaiting classification as of December 31, 1997. Of those 411 cases, 309 complaints were closed between January 1 through December 31, 1997.

## CHAPTER 7 BACKGROUND OF COMPLAINANTS BY COUNCIL DISTRICT

The Office of the Independent Police Auditor utilizes a Voluntary Questionnaire to request information about the statistical background of complainants. The sole purpose of the Voluntary Questionnaire is to monitor statistical trends in an effort to better serve the complainant and the community.

Complainant characteristics included ethnicity, gender, age group, education, and occupation. Two hundred forty-eight or 65% of the complaints were filed by males, females filed 131 or 35%. The age group filing the most complaints was the 31 - 59 years. Forty-three percent of the complainants reported having a college or graduated degree. Occupations were varied. Hispanics filed the most complaints, 115 or 30%, followed by European-Americans with 77 or 20%.

## CHAPTER 8 DISCIPLINE IMPOSED

Of the 309 closed cases in 1997, only 147 cases were Formal Complaints. The Formal classification complaint is the only type that can be sustained, and for which the officer involved can receive discipline. The Formal complaints can be initiated either by a civilian (Civilian-Initiated (CI) complaints) or by the Chief of Police (Department-Initiated (DI) complaints). Of the 147 Formal complaints completed, a finding was reached in 73 cases. Twenty-two complaints were sustained. The sustained rate for all the Council Districts in 1997 was 30%. The other 74 cases either involved non-sworn officers of the SJPd or the investigations were closed with a No Finding. There were four Formal cases that closed before the investigation was completed because the two officers left the San José Police Department (SJPd). Thus, no discipline was imposed.

## CHAPTER 9 INTERVENTION COUNSELING

The Intervention Counseling (IC) Program is used as an “early warning system” to track police officers with complaint histories for the purpose of providing guidance. This informal counseling session involves a review of the complaints filed against a subject officer, whether sustained or not, in a positive attempt to assist him/her. No formal record is made of the substance of the IC session.

Time Period of Intervention Counseling	Total Number of Intervention Counseling Sessions	Number of Subsequent Complaints from IC Date to December 31, 1997					
		0	1	2	3	4	5+
Jan. - Dec. 1997	20	14	3	2	0	1	0
Jan. - Dec. 1996	16	3	3	5	1	2	2
Jan. - Dec. 1995	15	5	3	3	2	1	1

Twenty IC sessions occurred in 1997. Seventy percent (70%) of the subject officers received no subsequent complaint following the IC session. Fifteen percent (15%) of the subject officers received one subsequent complaint following the IC session. Ten percent (10%) of the subject officers received two complaints following the IC session.

## CHAPTER 10 STATISTICAL BACKGROUND OF SUBJECT OFFICERS

An additional statistical area tracked by the IPA includes the background of the subject officers who are listed in Formal, Informal, and Procedural complaints. Specific areas include the subject officer’s unit, gender, and years of experience with the San José Police Department.

Officers with two to four years of experience received the highest number of complaints and the highest number of Unnecessary Force allegations. These officers accounted for 19% of all officers in the

SJPD, and were responsible for 34% of all the complaints received. Officers with more than 16 years of experience followed with a total of 85 complaints. However, the allegations most often filed against them was for Improper Procedure. They comprise 33% of all officers in the SJPD and account for 21% of all complaints.

The Patrol division followed by Field Training and Narcotics Enforcement Units of the Bureau of Field Operations received the most complaints. The ratio of males and females receiving complaints was in proportion to their composition in the SJPD.

## CHAPTER 11 & 12 ANALYSIS & SUMMARIES OF AUDITED COMPLAINTS

This section contains analysis of the different fields used in auditing the investigations of the four complaint classifications. This Executive Summary includes only the results of the audits of Formal complaints since they allege the most serious violations of the law or of Department policies, procedures, rules or regulations by an officer. There were 161 Formal cases audited from January 1 through December 31, 1997.

### Was review requested by the complainant?

Yes	66	41%
No	95	59%

A total of 66 complainants or 41% requested the IPA to review their case. Some of these complainants requested review while the investigation was being conducted by the PSCU, others requested review after the PSCU had completed their investigation of the case.

### Did the IPA request further action from PSCU?

Yes	21	13%
No	140	87%

The IPA requested further action from the PSCU in 21 or 13% of the Formal cases it reviewed. Requests varied from re-opening an investigation to providing the IPA with additional information or documentation.

### Did the Auditor attend officer interviews conducted by the PSCU after being notified?

Notification requested	104	65%
Notice received	27	17%
Interviews attended	18	70%
Interviews not attended	8	30%

From a total of 161 Formal cases, the IPA requested to be notified of police officer interviews in 104 cases. Of those, the IPA was notified of only 27 interviews. The Auditor attended 18 interviews, and one interview was canceled. The PSCU failed to provide notice for 77 interviews. New requirements for the PSCU regarding notification of officer interviews to the Auditor have been made.

What is the overall quality of the investigation?

Very Thorough	13	8%
Thorough	95	60%
Adequate	33	21%
Inadequate	11	7%
N/A	7	4%

The overall quality of the investigations as reported, reflect the conclusions of the IPA. The IPA lists those cases where the investigator has taken every reasonable step to discover relevant witnesses or evidence as very thorough. Thorough investigations are those where the investigator has taken all the steps likely to discover important evidence. Adequate investigations are those where the investigator took only the most obvious steps to uncover important information. Inadequate investigation are those where not even the obvious steps were taken to uncover vital information.

Did the IPA agree with the finding of the investigation?

Yes	147	91%
No	14	9%

The IPA disagreed with the finding of the investigation in 14 of the 161 formal cases even after further action was requested from the PSCU.

Did the incident give rise to criminal action against the complainant?

Yes	85	53%
No	76	47%

Roughly half of the complainants who filed complaints against a police officer were arrested for a crime although criminal charges were not always filed against them. Forty-seven percent of the complainants were not accused of violating any laws.

Was the case sent to the Chain of Command for Finding and recommendations by the PSCU?

Yes	25	16%
No	117	73%
N/A	17	11%

Upon completion of the investigation, the PSCU Lieutenant and investigator determine whether the case merits sending it to the subject officer's Chain of Command for findings and recommendation of discipline. Only complaints believed to be sustainable by the PSCU are sent to the Chain of Command. All complaints alleging unnecessary force require a review by the Assistant Chief before they can be closed. For a breakdown of the audit results of the three other classifications of complaints, please refer to the main body of this report.

In order to better inform the community of how the IPA functions, Chapter 11 highlights a few cases which were selected in order to illustrate the auditing process. These are actual cases investigated by the PSCU and reviewed by the IPA. The cases were selected not because they are most

representative of the actions taken by the IPA and the PSCU, but because they illustrate the different options and courses of action the IPA can pursue. The locations and names of individuals involved have been intentionally left out in order to preserve their privacy.

## **CHAPTER 13        CONCLUSION**

The IPA and the PSCU continue to work in a productive and professional manner with ongoing improvements at both offices. The major emphasis for 1998 will be community outreach as a joint project by the PSCU and the IPA. The idea of taking the citizen complaint process to the neighborhoods was received with great enthusiasm by the PSCU.